



IN THE
Supreme Court of the United States

OCTOBER TERM, 1990

ROBERT C. RUFO, Sheriff of Suffolk County, et al.,
Petitioner,

—against—

INMATES OF THE SUFFOLK COUNTY JAIL, et al.,
Respondents.

THOMAS C. RAPONE, Commissioner of Correction, et al.,
Petitioner,

—against—

INMATES OF THE SUFFOLK COUNTY JAIL, et al.,
Respondents.

**BRIEF AMICUS CURIAE
IN SUPPORT OF PETITIONERS**

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**THE INTEREST OF AMICUS CURIAE AND
SUMMARY OF ARGUMENT**

Every state has a strong interest in directing the operations of its institutions, departments and programs. Thus, when those operations are governed, in whole or in part, by the provisions of a consent decree entered into in a federal court action, a state also has a strong interest in the standard to be applied by federal courts upon any motion to modify the

decree. What is at issue is not simply abstract principle but a matter of practical concern to the officials responsible for providing essential state services. New York State, as *amicus*, submits this brief to set forth for the Court its experience with consent decrees since the United States Court of Appeals for the Second Circuit adopted the standard for modifying consent decrees in institutional reform litigation set forth in *New York State Association For Retarded Children Inc. v. Carey*, 706 F.2d 856 (2d Cir.), *cert. denied*, 464 U.S. 915 (1983) (hereinafter "*Retarded Children*"). This experience, New York submits, supports the position that a standard of flexibility should govern the oversight and management of injunctive decrees in institutional litigation.

ARGUMENT

These cases present issues of fundamental importance concerning the appropriate role of the federal courts in directing the operations of state institutions or other departments of state government. Managing institutions is among the most difficult functions of state governments. It requires "expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government." *Procurier v. Martinez*, 416 U.S. 396, 404-05 (1974); *see also Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89 (1984).

To be sure, the courts must insist that states obey all constitutional and other federal mandates in operating their institutions. An inflexible court decree, however, prevents a natural evolution in management techniques and limits the available range of responses required when dealing with the many complex and sometimes dangerous situations that arise each day in the administration of institutions. Accordingly, as the Second Circuit recognized, standards of flexibility should govern the oversight and management of an injunctive decree:

It is well recognized that in institutional reform litigation such as this, judicially-imposed remedies must be open to adaptation when unforeseen obstacles present themselves, to improvement when a better understanding of the problem emerges, and to accommodation of a wider constellation of interests than is represented in the adversarial setting of the courtroom.

Retarded Children, 706 F.2d at 969; accord, *Pena v. New York State Division for Youth*, 708 F.2d 877, 880 (2d Cir. 1983); see also *Philadelphia Welfare Rights Org'n v. Shapp*, 602 F.2d 1114 (3d Cir. 1979), cert. denied, 444 U.S. 1026 (1980). Thus, where a consent decree concerning an institution contains omissions, or, in light of subsequent experience, proves inadequate or unyielding, a court may modify the judgment to fill in gaps, cure ambiguities or remedy inadequacies. *Keith v. Volpe*, 784 F.2d 1457, 1460 (9th Cir. 1986).

In the eight years since the Second Circuit adopted the flexible standard enunciated in *Retarded Children*, New York State has had extensive experience in litigating, settling and effectuating decrees in institutional cases. There are currently some twenty ongoing consent decrees or stipulations of settlement involving the management of New York State institutions. (A list of these decrees, with an outline of their provisions, is attached hereto as Appendix A). Of these, some fourteen decrees were entered into after the Second Circuit decided *Retarded Children* on March 31, 1983. Also, in those same years, only four such institutional cases have gone to trial.¹ The fear expressed by the district court below, that

1 These cases are *Alston v. Coughlin*, 668 F. Supp. 822 (S.D.N.Y. 1987) (Inmates at Fishkill Correctional Facility claimed that the totality of conditions at the facility violated the Eighth Amendment. Judgment was in favor of defendants); *Benjamin v. Coughlin*, 905 F.2d 571 (2d Cir. 1990) (Rastafarian inmates claimed their First Amendment rights to practice their religion were being violated. The court found for defendant except for defendant's directive that the inmates be required to cut their hair); *Griffin v. Coughlin*, 743 F. Supp. 1006 (N.D.N.Y. 1990) (Inmates in protective custody at Clinton Correctional Facility challenged their conditions of confinement. The court found in favor of defendants except to require that defendants provide private meet-

a flexible standard for modification would impede settlement has, in the case of New York State, simply not materialized.

At the same time, while certain of the decrees are fairly simple, e.g., *Webb v. Dalsheim*, (Appendix A at page 16) regarding wearing beards for religious reasons, or *Dumont v. Coughlin*, (Appendix A at page 3) regarding publications which can be received by inmates, by and large the decrees set up detailed and extensive systems for the operation of the subject institutions. Thus, for example, *Doe v. Cuomo*, (83 Civ. 4068 S.D.N.Y.) (LLS), contains provisions for the care and treatment of patients at Manhattan Psychiatric Center (A copy of the decree is attached as Appendix B), and *Todaro v. Coughlin*, (74 Civ. 4581 S.D.N.Y.) (RJW), contains provisions for the delivery of medical care at Bedford Hills Correctional Facility (A copy of the Stipulation of Settlement is attached as Appendix C).

Doe v. Cuomo was litigated for more than four years before settlement was reached. The settlement which was developed includes staffing, staff training, supervision, clinical care, consultations, nursing care, programs and activities, capital renovations, record keeping and monitoring. *Todaro v. Coughlin* began in 1974 as *Todaro v. Ward*. In 1977, after trial, the court entered judgment directing defendants to take several specific measures to remedy the constitutional violations found in its decision. In 1988, plaintiffs moved to find defendants in contempt and for modification of the judgment to enlarge the scope of the judgment, in large part with respect to inmates with AIDS. After extensive and prolonged negotiations, in May 1989, the parties reached an agreement as to a modification of the judgment. The modifications included establishing systems to implement and track physician orders and to provide care to plaintiff's between screen-

ings for such inmates with their spiritual advisors); *Ortiz v. Coughlin*, 85 Civ. 1669, (S.D.N.Y.) (KTD) (Inmates at Sing Sing Correctional Facility claimed that the fire safety provisions at the facility violated the Eighth Amendment. In June, 1990, judgment was entered in favor of defendants.

ing sessions. The modification also provides for increased staffing levels. The settlements in *Doe* and *Todaro* are typical of those entered into which concern the operations of institutions. As they and others similarly complex demonstrate, flexibility to modify particulars is a vital component of the management process for these institutions.

CONCLUSION

For the reasons set forth above, the decision of the Court of Appeals for the First Circuit should be reversed and the case remanded for application of standards consistent with *Retarded Children*.

Dated: New York, New York
April 15, 1991

Respectfully submitted,

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APPENDICES



APPENDIX A

1. *Anderson v. Coughlin*, 80 Civ. 3037, S.D.N.Y. Judge Brieant, effective 1984. This case concerns medical care, access to courts and exercise in special housing units at four correctional facilities—Sing Sing, Fishkill, Green Haven & Bedford Hills. Special housing units house inmates in disciplinary segregation and awaiting disciplinary proceedings.

Exercise—The facilities must give a full hour of exercise each day. There must be exercise areas, certain clothing and equipment must be available. The equipment includes a basketball hoop, basketball, bench, checkers and deck of cards. Depending on the facility, at least two, four or six inmates should be allowed to exercise together in each area unless there is a risk that someone will be harmed if the inmates have communal exercise.

Access to legal materials and assistance—Depending on the facility, there will be a mini-law library adjacent to the special housing unit ("SHU") from which an inmate can borrow up to 5 books a day or access to the facility's law library. Inmates can get books or assistance from an officer assigned to the law library to discuss legal problems. Facilities must also provide access to photocopying, typing, a notary and necessary legal supplies.

Record keeping—The facilities must keep certain records of SHU inmates' exercise and access to legal materials and assistance.

Medical Services—Sing Sing and Fishkill Correctional Facilities must provide for a medical assessment upon admission which includes a review of the inmate's medical records, a physical evaluation, behavior assessment; inquiry into any chronic or disease; and inquiry into any outstanding orders special diets, specialist consultations medications and therapeutic devices. Health staff shall conduct on the unit encounters daily according to specific procedures. The inmate must be taken to the clinic if he cannot be treated on the unit, that DOCS must note in the inmate's health records each time he

is seen, that DOCS must review the inmate's records in deciding how to treat him and that he must receive health care services equivalent to that given to general population inmates.

2. *Dean v. Cuomo*, 84 Civ. 1528 S.D.N.Y. Judge Kram. The case concerns the provision of dental care to inmates at Bedford Hills Correctional Facility. The settlement, effective February 26, 1987, provides:

Treatment Priorities shall be established for all patients examined in the Bedford Hills dental clinic, other than those who are not in need of treatment.

Access To Dental Care And Follow-up Treatment is to be provided pursuant to emergency and sick call procedures.

1. Dental Emergencies—Each patient requesting emergency dental assistance shall be evaluated, and examined in accordance with certain procedures. These procedures require time frames for evaluation, examination and treatment, protocols and record keeping.

2. Dental Sick Call—Inmates shall have an opportunity to request dental sick call in writing each day, time frames for examination are set up and provisions for informing inmates of their treatment plan are established.

3. Follow-up Care, including treatment by an outside provider shall be provided within certain time frames and provisions for informing a patient are established.

Procedures are also established for when a patient shall be deemed to have refused treatment

Implementation provisions include provisions for adequate and properly functioning facilities and equipment, maintaining individual dental records, resolving complaints through the existing grievance mechanism, and providing orientation materials.

Compliance Supervision provisions include maintaining records, separate from patient dental charts, relating to prosthetic services, all requests for or scheduling of dental care

and treatment of patients, and patients seen and procedures performed on a daily basis, Compliance also includes a quality assurance mechanism to be employed quarterly by dentists who are not employed at Bedford Hills which shall follow a protocol, periodic reports to counsel for plaintiffs and a right, by plaintiffs attorneys and experts, to inspect all dental care areas of Bedford Hills and to review all records and documents.

3. *Doe v. Cuomo*—See Appendix B.

4. *Dumont v. Coughlin*, 82 CV. 1049; *Smith v. Coughlin*, 82 VB 426, E.D.N.Y., Judge McCorn, effective March 9, 1983. This settlement governs an inmate's rights to receive publications at Auburn and Clinton Correctional Facilities. It:

1. Establishes lists of allowable publications.
2. Revises Directive 4572 guidelines on publications.

3. Establishes a Media Review Committee and sets its due process functions to determine allowability of publications where challenged.

5. *Foe v. Cuomo*, 75 Civ. 1029, E.D.N.Y. Judge Bartals, effective November 15, 1988. This case involves the care and treatment of clients at Bronx Psychiatric Center. The stipulation of settlement provides:

1. Bronx Psychiatric Center agrees to maintain accreditation from The Joint Commission on Accreditation of Hospitals (JCAH) during the pendency of the stipulation. Defendants shall immediately notify plaintiff's counsel in writing of any changes in BPC's accreditation status.

2. Bronx Psychiatric Center agrees to adhere to Bronx Psychiatric Center Quality Assurance Plan and its subsequent amendments.

3. The BPC quality assurance plan shall be amended or supplemented to include

(a) Enhanced monitoring and review of programs and activities in the areas of nursing; social work, dental care, speech/language and audiology, and vocational rehabilitation, including oversight of therapies and services provided by sources outside the hospital;

(b) Annual medical review of a sample of records by OMH personnel from outside BPC or by an independent organization or entity;

(c) An internal record review process on a structured, systematic basis across all units and professional disciplines;

(d) A procedure for ensuring that problems and deficiencies noted through all quality assurance activities are systematically addressed and corrected.

(e) Regular and continuing review of the utilization of psychotropic medication, seclusion, quiet rooms, physical and mechanical restraint, and other aversive procedures or techniques.

Mentally Retarded Population

1. Bronx Psychiatric Center will refer patients to the Office of Mental Retardation and Developmental Disabilities (OMRDD) which will offer placements in an appropriate OMRDD program and will also continue to provide programming for these patients appropriate for a mentally retarded population while these patients remain at Bronx Psychiatric Center awaiting an OMRDD placement.

2. Bronx Psychiatric Center may in the future admit individuals from OMRDD for the purpose of stabilizing their psychiatric condition.

Census Reduction

1. Bronx Psychiatric Center undertakes and agrees to maintain the census at a program goal opportunity (PGO). The census on any given ward may reach up to 10% over the PGO and still be deemed in compliance with the terms of this

settlement, so long as the census as a whole does not exceed the PGO of the facility by more than 8%.

2. Provisions are also established for planning census reduction, including plans for alternate placements. Counsel for the plaintiffs will be notified of any changes creating new wards, closing current wards, or reconfiguring wards in order to reflect the changing patient population.

3. In addition the settlement provides for grievance procedures, staff ratios, furnishings, proper ventilation and heating, privacy in sleeping and personal hygiene areas, a treatment planning process, progress notes and discharge planning, programming, vocational training, recreation, medical and dental care and suicide prevention measures.

6. *Frazier v. Ward*, 73 CV 306, N.D.N.Y. Judge Foley, effective June 21, 1977. This case concerns Clinton Correctional Facility's SHU search procedures and exercise provisions. The provisions of the order are:

1. Inmates cannot have anal or genital searches performed upon except or reasonable cause or upon entry or departure from the facility

2. Sets standards for searches when authorized.

3. Mandates one hour of outdoor exercise per day weather permitting.

7. *Honeycutt v. Coughlin*, 80 Civ. 2530, S.D.N.Y. Judge Canella, effective April 3, 1984. This case involves conditions of confinement for Protective Custody inmates at Green Haven Correctional Facility. A consent judgment provides:

1. Inmates will be permitted outside their cells every day between 7:30 a.m. and 3:00 p.m., except for times at which the count is taken. At least two of these hours will be for recreation, at which time plaintiffs will go to the outside yard or, if they choose not to go to the yard, they will be locked in. If the weather is very bad, recreation in the yard can be limited to one hour, or required to be provided on the gal-

lery. The yard will be maintained in good condition and will contain some recreation equipment. There will also be some equipment, including a television, on the gallery. The television may be used during all out-of-cell hours.

2. Breakfast and lunch will be provided, for those who wish to eat outside their cells, on the gallery.

3. There shall be enough officers on the unit so that plaintiffs may be out of their cells safely.

4. At least five plaintiffs will be given jobs on the gallery.

5. Self-study courses, and teachers to assist with these, will be available on the protective custody unit.

6. Inmates may receive at least four law library books a day and retain them for at least twelve hours. Inmates will be entitled to use any law library materials and to receive them within twenty-four hours of a request, unless the item is in use, in which case it will be reserved for the requesting plaintiff.

7. The Department will study the possibility of setting up a vocational class or required to establish a vocational class or program if protective custody inmates are not interested in participating.

8. An inmate law library clerk, clear for security purposes, will make daily rounds of the protective custody unit and assist those plaintiffs who require assistance. A Spanish-speaking law clerk will be available on request.

9. The services of a notary public will be available on the unit within forty-eight hours of a request (unless the request was made on a week-end or holiday).

10. Inmates shall have the same access to photocopying and typing services as general population inmates.

11. Writing materials shall be available.

12. General library materials shall be available. At least two copies of a major daily newspaper and two copies of two weekly magazines shall be available.

13. Inmates will not be able to make personal appearances before the grievance committee, but, in all other respects, access to the grievance procedure will be the same as it is for general population inmates.

14. Catholic, Protestant and Muslim clergy each will tour the unit once a week and counsel, in privacy, any inmate who wishes such counselling. A rabbi will visit the unit, also for private counselling, when an inmate makes a written request to see a rabbi. Community Chaplains also will visit the unit, on written request by a plaintiff. At least one Christian and one Islamic service will take place on the unit weekly.

15. Food will be served at appropriate temperatures and will be the same as that served to the general population. Steps will be taken to assure that plaintiff's food is not tampered with.

16. No inmate shall be housed in a cell that does not have running water or a working toilet.

17. Inmates will have the option to go to the package room, under escort, to view the opening of their packages or to receive the packages, already opened, on the protective custody unit.

18. Inmates will be entitled to the same telephone privileges as are inmates in general population and telephone calls will be made outside the earshot of correctional personnel.

19. Inmates will be eligible for trailer visits during two normal visit cycles per year; eligibility will be determined according to the same criteria used for general population inmates.

20. Inmates will receive credit for one program point, toward temporary release, every six months.

21. The mere fact of protective custody status will not be a basis for denial of parole release.

22. Protective custody inmates who are not victimprone will not be housed on the protective custody unit. However,

in an emergency, protective custody inmates who are not victimprone may be housed on the unit for no more than three days. When this occurs, non-victim prone inmates will be kept in the front of the gallery and will be kept separated from plaintiffs.

8. *Hurley v. Coughlin*, 77 CV 3847, S.D.N.Y. Judge Carter. This case involves strip searches and strip frisks at all correctional facilities. After a trial on the merits the Court issued an opinion, 549 F. Supp. 174, which all parties determined to be unworkable. Therefore, a settlement was reached in July, 1983.

It provides:

A. Definitions of

1. *Strip Search*—A search of an inmate's clothes once they are removed and a visual inspection of the inmate's naked body.

2. *Strip Frisk*—A search of an inmate's clothes and body including body cavities.

B. Circumstances when a strip search frisk may be done.

1. *Probable Cause*: a. Where a correction officer has reasonable grounds to believe that an inmate is hiding contraband on his body or in a body cavity area, the correction officer must report this finding to a officer ranked Sergeant or above.

b. That officer must make a determination that there are reasonable grounds for belief that the inmate should be strip searched or strip frisked, and, if he makes an affirmative determination, the officer may conduct a strip frisk or strip search.

c. The officer must thereafter set forth the basis for probable cause in a signed writing, which states the inmate's name and number, the time place and scope of the strip search or strip frisk, whether force was used, the name and ranks of

person(s) conducting and/or present at the strip search or frisk search, and the results of the strip search or strip frisk.

2. *Transfer*: When an inmate is transferred from one DOCS facility to another, he/she may be strip frisked/ searched at the sending facility, but not, unless there is probable cause, at the receiving facility.

3. *Contact Visits*: All inmates may be strip frisked or strip searched after a contact visit, but not, unless there is probable cause, after non-contact visits.

4. *Attorney Visits*: Inmates have the option of having non-contact visits with attorneys.

5. *Special Housing Units*: On initial entry to a Special Housing Unit, used for disciplinary or protection purposes, an inmate may be strip frisked or strip searched.

6. *Psychiatric Housing*: On admission to psychiatric housing, a strip frisk may be conducted, by medical personnel if determined to be necessary for psychiatric reasons by a qualified medical provider. Otherwise, the health care provider should conduct a full disrobed physical examination. If that does not occur the P.S.U. correction officer(s) may conduct a strip search.

7. *Unsupervised Leave*: An inmate may be strip frisked/ searched upon return to a correctional facility from temporary release, furlough, work release.

8. *Supervised Leave*: When an inmate is leaving on a supervised outside trip, an officer may strip frisk search the inmate when it appears the inmate has (a) notice of the date of the trip and/or (b) a history of escape, absconding or attempting to escape or abscond or (c) a history of possession of contraband used or attempted to be used for the purpose of escape, attempted escape, assault on a correction officer, or attempted assault on a correction officer. If, during a supervised outside trip, the escorting officer loses sight of the inmate or his hand movements, and the officer believes the

inmate has contraband, the inmate may be strip frisked or strip searched upon return to the facility.

9. *Facility or Areawide Searches*: Strip frisks searches shall not be conducted as a part of a general search of a facility or portion thereof except:

a. During a routine block search, an inmate may be strip searched or subjected to an inspection of his mouth, ears, hair, hands, armpits and feet.

b. During an entire or partial facility search undertaken in response to a major threat to the security of the facility, and the search having been approved by the Commissioner or Deputy Commissioner, a strip frisk may be conducted.

10. *Procedures*: When strip frisks or strip searches are conducted:

a. the officer or employee shall take steps to insure that the strip search/frisk is conducted in the most dignified and least intrusive manner possible.

b. Areas may be designated where multiple strip frisks or strip searches can be conducted at the same time as long as there are partitions or curtains separating each area and inmate from others.

c. All strip searches or strip frisks will be conducted in areas which are adequately clean and heated and where inmates can keep their clothes off the floor.

d. Strip searches/frisks will be conducted by an officer of the same sex as the inmate except in psychiatric housing, where a qualified male or female medical provider shall perform any strip frisk.

e. The strip search or strip/frisk will be conducted by one officer and, if necessary, a supervisor to observe, except:

1. When a facility emergency requires the inmates be held and searched in groups; or

2. When there is a reason to believe that the inmate will actively resist the strip search or strip frisk, thereby forcing the presence of other officers.

9. *Inmates of the North Gallery v. Smith*, Civ-77-187 W.D.N.Y., Judge Curtin. Effective April 11, 1980. This is a Stipulation concerning the North Gallery of the (SHU at Attica Correctional Facility) controlling procedures for:

1. Placement of inmates on the gallery.
2. Weekly change of clothes.
3. Sanitation procedures and materials supply.
4. Amount of legal materials and supplies.
5. Hygiene items supply.
6. Adequacy of heat and ventilation
7. Exercise.
8. Obtaining reading materials.
9. Access to Law Library.
10. Access to religious articles.
11. Deprivation of any of the above.

10. *Jenkins v. Coughlin*, CV-88-0782T, W.D.N.Y.. Judge Telesca. This case concerns the provision of dental care to inmates at Alton Correctional Facility. It was settled in July 1990. The settlement contains provisions similar to those of *Dean v. Coughlin, supra*. In addition, it has provisions for oral surgery and for the delivery of care to inmates in restricted housing.

11. *Jones v. Coughlin*, 80 Civ. 5130, S.D.N.Y. Judge Carter, Consent Judgment effective May 20, 1983. This case involves fire safety conditions in the Hospital Building at Bedford Hills Correctional Facility. It:

1. Provides for a sprinkler system, roof repair, fire retardant construction, fire doors, sealing of certain rooms, con-

struction of cell doors and viewing windows, certain regulations in the nursery, smoke barriers.

2. Requires establishment of evacuation routes.
3. Mandates good working order maintenance of fire systems.
4. Regulates types of mattresses to be used.
5. Establishes fire safety training for staff and inmates including fire drills, fire brigade.
6. Assures access to outside fire department.
7. Requires duplicate key to be maintained by personnel.

12. *Koslowski v. Coughlin*, 81 Civ. 5886; *Sims v. Coughlin*, 81 Civ. 2355, S.D.N.Y. Judge Stewart, effective June 10, 1983. This Class action concerned due process retraction of visitation rights at all correctional facilities. A stipulation of settlement was entered after a decision finding the Department of Correctional Service directive unconstitutional.

The Settlement provides:

1. The Superintendent of a facility is to review any suspension or revocation of visitation for any inmate or visitor.
2. Plaintiff's counsel is to get copies of revocations and suspensions once a month.
3. New procedures are appear in directive 4403.
4. An inmate or visitor accused of misconduct is to get written notice of charge.
5. An appeal of a revocation and suspension can be taken. If the suspension and revocation is less than 6 months, a hearing is to be held.
6. A visit misbehavior code is established which sets forth the various types of prohibited behavior and the range of punishment for each.

13. *Lewis v. Coughlin*, 82 Civ. 5115, S.D.N.Y. Judge Broderick. Order dated November 9, 1984. This case concerns urinalysis testing at Bayview Correctional Facility. It provides:

1. An inmate may be ordered to submit a urine sample only under certain circumstances:

- a) when there is reason to believe that the inmate is under the influence of illicit drugs or alcohol;
- b) When the inmate returns from a furlough, family reunion, work or temporary release program, community service or other outside work detail;
- c) when it is part of a random testing of entire population or identifiable unit.

2. Requires identification of inmate and written approval for the test.

3. No inmate shall be required to give more than five random urine samples in any twelve month period.

4. Each inmate ordered to provide a specimen for urinalysis testing shall be informed of the underlying reason.

5. Specific procedure of obtaining specimen.

6. Specific procedure of processing specimen.

7. A positive urinalysis result may be used in a disciplinary hearing.

8. All results obtained in the course of the Urinalysis Testing Program shall be assembled and retained on a "Daily Log" form.

9. Any inmate who may be confined in a cell or SHU upon notification to the facility of a positive test, prior to any disciplinary proceeding, must be interviewed within 24 hours of being segregated.

14. *Milburn v. Coughlin*, 70 Civ. 5077, S.D.N.Y. Judge Ward, effective August 20, 1982. Medical care at Green Haven. Stipulation for entry of final judgement.

1. Sets minimum staffing, hours per week for Medical Unit.
2. Requires certain equipment to be maintained on site.
3. Establishes procedures for access to M.D.'s.
4. Fixes sick call procedures.
5. Sets diagnostic test and X-ray systems and follow up.
6. Assures access to specialists within fixed time periods.
7. Establishes minimum requirements and procedures for dental care.
8. Requires inmate orientation.
9. Sets review of medical records for arriving inmates.
10. Categories inmate with chronic diseases.
11. Systemizes medical record maintenance.
12. Regulates security interaction with medical care.
13. Establishes permissible duties for inmate health care workers.
14. Vests Medical Director with final authority for infirmary admissions.
15. Creates the Unit for the Physically Disabled.
16. Requires pharmacy profiles on all inmates.
17. Assures special medical diets.
18. Requires provision of therapeutic devices within time limits.
19. Assures availability of emergency transport vehicle.
20. Creates periodic chart reviews.
21. Provides for continuing medical education for staff.
22. Assures continuity of care for inmates transferred in and out of G.H.

23. Creates periodic outside audits by Montefiore Hospital.

Supplemental Stipulation:

24. Creates priority system for hospitalizations.

25. Expands sick call requirements.

15. *New York State Association for Retarded Children v. Cuomo*—706 F.2d 856 (2d Cir.) cert. denied, 464 U.S. 915 (1983). Upon remand to the district court, the parties entered into a stipulation of settlement in February 1987. The stipulation set up a schedule for closing Staten Island Developmental Center and the Karl D. Warner Center and for transferring people from the centers to other facilities. The Stipulation established qualifying facilities for transfer, procedures for transfer, the numbers of people to be transferred to each facility, and a population census for the facility.

16. *Rights, Equality, Always at Letchworth, Inc. v. Cuomo*, 84 Civ. 4163, S.D.N.Y. Judge Stewart. This case involves the care and treatment of the residents of Letchworth Village Developmental Center (LVDC). The case was settled, by stipulation, in November 1988. In the stipulation defendants agreed to maintain substantial compliance with Federal Medicaid regulations by complying with the regulatory requirement for "active treatment" and with at least forty of forty five additional standards concerning such areas as staffing, reports, use of restraints, grooming, behavior modification, medical and dental care, recreation and engineering and maintenance. The stipulation also set up procedures for resolving disputes under it, for conducting compliance surveys, for transferring residents to community facilities and a population census, with a staffing ratio for the facility.

17. *Salik v. Farrell*, 79 Civ. 0216, S.D.N.Y. Judge Griesa, effective April, 1983. A stipulation of dismissal established videotape monitoring system at Green Haven SHU. It provides for:

1. Video system to be operated 24 hours a day.
2. Tapes to be kept for 30 days or longer if requested by plaintiff's counsel.
3. Tapes may be reviewed by counsel upon request.
4. Complaints about excessive force to be referred to DOCS Inspector General.
5. That inmates are not to be taken into non-video monitored areas.

18. *Society for Good Will to Retarded Children v. Cuomo*, 78-CV-1847, S.D.N.Y., Judge Weinstein. This case involves the care and treatment of residents at Long Island Developmental Center. Upon a remand to the district court, the parties entered into a stipulation of settlement in September, 1990. Defendants agreed to maintain substantial compliance with Federal Medicaid regulations, similar to the provisions in *Rights Equality, Always at Letchworth, Inc.*, supra. The stipulation also set up procedures for transferring residents to smaller facilities.

19. *Todaro v. Ward*, 74 Civ. 4581, S.D.N.Y. Judge Ward. This case involves medical care at Bedford Hills Correctional Facility. See Appendix C.

20. *Webb v. Dalsheim*, 80 Civ. 7141 and *Farrad v. Walters*, 81 Civ. 2705 S.D.N.Y. Judge Sand. Consent order dated December 8, 1981. Wearing of beards for religious or medical reasons.

1. All inmates confined in a New York Department of Correctional Services (DOCS) facility who have submitted to one initial clean shave identification photograph upon reception by DOCS shall be allowed to grow and retain a beard not longer than one inch in length.

2. Defendants shall annul the disposition of all disciplinary proceedings held against named plaintiffs for refusal to

shave and shall expunge all entries of any such disciplinary proceedings.

3. Upon the request of any class members (past, present, and future members of the two classes) or plaintiffs' attorneys, defendants shall annul the dispositions of any and all disciplinary proceedings held against such class members on or after September 26, 1980.

APPENDIX B

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

83 Civ. 4068 (LLS)

JANE DOE, ROGER BOE, by his next friend the Manhattan State Citizens Group, JOHN ROE, JILL NOE, by her next friend the Manhattan State Citizens Group, NANCY WOE, by her mother and legal guardian Wendy Woe, JACK SOE, by his next friend the Manhattan State Citizens Group, RALPH POE, by his sister and next friend Susan Poe, SALLY FOE, by her father and next friend George Foe, and MICHELLE COE, by her next friend the Manhattan State Citizens group, on their own behalf and on behalf of all others similarly situated,

Plaintiffs,

—against—

MARIO CUOMO, as Governor of New York State, STEVEN KATZ, as Acting Commissioner of the New York State Office of Mental Health; ARTHUR WEBB, as Commissioner of the New York State Office of Mental Retardation and Developmental Disability; MARLENE LOPEZ, as Director of the New York City Regional Office of Mental Health; and MICHAEL FORD, as Director of the Manhattan Psychiatric Center,

Defendants.

STIPULATION AND FINAL JUDGMENT

WHEREAS, Plaintiffs have commenced the captioned litigation in order to challenge the of care and treatment provided patients at the Manhattan Psychiatric Center; and

WHEREAS, Defendants have denied the allegations of the Amended Complaint and have defended against them; and

WHEREAS, Plaintiffs and Defendants, without conceding any infirmity in their claims or have agreed to settle the dispute between them with respect to the care and treatment of at the Manhattan Psychiatric Center and to take the steps outlined in this Stipulation and Judgment in order to promote and enhance high quality care and treatment at the Psychiatric Center for the benefit of the patients and their families as well as the and para-professional staff;

NOW, THEREFORE, before any testimony is adduced and without trial or adjudication of any issue of fact or law herein, it is hereby STIPULATED AND AGREED by and between the parties as follows:

1. GENERAL PROVISIONS

A. *Jurisdiction.*

1. The Court has jurisdiction over the subject matter of this action and over the parties hereto.

2. This Stipulation and Final Judgment shall terminate this action subject to the terms of paragraph 3 of this Section I(A) and paragraph 2 of Section I(B). The parties shall file a copy of this Stipulation and Final Judgment with Stipulation of Discontinuance in the action pending in New York Supreme Court entitled *Doe v. Cuomo*, Index No. 23311/86 (N.Y. County), which shall terminate that action, subject to the terms of paragraph 2 of Section I(B).

3. The Court shall retain continuing jurisdiction over the implementation of this Stipulation and Final Judgment and any disputes connected therewith.

4. In the event of any disputes regarding the implementation of this Stipulation and Final Judgment, the parties shall attempt good faith resolution before they may seek judicial intervention pursuant to paragraph 3 of this Section I(A).

B. Budget requests; Reserved Rights

1. Each year, defendants shall submit to the New York State Legislature a budget that contains sufficient funds to implement all aspects of this Stipulation and Final Judgment. Defendants shall provide plaintiffs' counsel with a copy of the Executive Budget when it is submitted to the Legislature in each year that this Stipulation and Final Judgment is in force.

2. With respect to budgets approved by the New York State Legislature, if the Legislature does not appropriate sufficient funds to implement any of Sections III(A)(1) (relating to psychiatrist staffing); III(B)(1) (relating to supervising psychiatrist staffing); IV(B)(3)(a) (relating to ward clerks); V(A)(1) (relating to nurse staffing) of this Stipulation and Final Judgment, plaintiffs reserve the right to reinstitute proceedings, in the status and as of the date of discontinuance of proceedings in connection with this Stipulation and Final Judgment, with respect to that portion of the Complaint which relates to those Sections as to which funds were not appropriated.

C. Compliance and Monitoring.

1. Defendants shall achieve substantial compliance with the terms and provisions of this and Final Judgment by the third anniversary of its execution by the Court. When the defendants have determined that they are in substantial compliance, they shall so notify counsel plaintiffs. Defendants' determination regarding such substantial compliance shall not be conclusive and may be contested by plaintiffs, who may, subject to the terms of paragraph I(A)(4) hereof, petition the Court to review whether defendants have substantially complied with the terms and provisions of this Stipulation and Final Judgment and to issue such orders as maybe necessary in connection with such review.

2. If defendants anticipate or experience an inability to comply with any term or provision of this Stipulation and Final Judgment, defendants shall report such inability to

counsel for plaintiffs, describing the nature of the problem, whether there are any alternative means of compliance and the defendants' plans for implementing such alternatives. Subject the terms of paragraph I(A)(4) of this Stipulation and Final Judgment, plaintiffs may petition the Court to review the matters reported to plaintiffs pursuant to this paragraph I(C)(20 and to issue such orders as may be necessary in connection with such review.

3. This Stipulation and Final Judgment will continue in force and effect for a period of two years after the date that defendants achieve substantial compliance with its terms and provisions.

4. In order to ensure proper implementation of this Stipulation and Final Judgment, in addition to the other reporting requirements specified in this Order, defendants shall supply counsel for plaintiffs with the following:

(a) *quarterly*, for a period of three years, (i) minutes of the Incident Review Committee, the Mortality Review Committee, the Governing Body, and the Executive Committee of the Medical Staff; (ii) overview of monthly statistics; (iii) any quality assurance special reports or studies; and (iv) any amendments to, additions to or deletions from the Manhattan Psychiatric Center's Policy and Procedures Manual; and

(b) *every six months*, for a period of three years, a report showing the status of defendants' compliance with Sections III(A)(1); III(B)(1); III(B)(3); V(a)(1); V(B)(4); VII(A)(1); VIII(A)(1); and IX(B)(2); of this Stipulation and Final Judgment.

5. After defendants have achieved substantial compliance with the terms and provisions of this Stipulation and Final Judgment, defendants shall continue to provide counsel for plaintiffs the materials specified in paragraph I(c)(4)(A), quarterly, for a period of two years.

6. During the time this Stipulation and Final Judgment is in effect, plaintiffs shall propose to the Governor the names of five persons who shall satisfy all conditions and fulfill all

requirements of membership for appointment to the Board of Visitors for the Manhattan Psychiatric Center. The Governor may appoint one of those persons so nominated to the Board of Visitors. In the event that the Governor does not make such an appointment, then three of plaintiffs' representatives and counsel shall have the right to tour the Manhattan Psychiatric Center at least twice each year during the year or years that the Governor does not appoint one of plaintiffs' nominees. Plaintiffs shall notify defendants' counsel seventy-two hours in advance of such a visit.

D. Scope and Coverage.

The terms and provisions of this Stipulation and Final Judgment shall apply only to the Manhattan Psychiatric Center. Nothing in this Stipulation and Final Judgment shall be construed as evidence of an agreement by defendants that the provisions of this Stipulation and Final Judgment set forth the minimum standard of care, under the United States Constitution or New York State law, for institutionalized mentally ill persons in the State of New York.

E. Policies Incorporated. Where this Stipulation and Final Judgment refers to policies of the Manhattan Psychiatric Center, those Policies are the current policies of Manhattan Psychiatric Center and are incorporated by reference. Defendants retain the discretion to amend such policies consistent with the terms of this Stipulation and Final Judgment. Plaintiffs and their counsel shall have access to such policies and any amendments thereto.

II. STANDARD OF CARE

The care and treatment of patients at the Manhattan Psychiatric Center shall be in accordance with (A) all provisions of this Stipulation and Final Judgment; (B) generally accepted professional judgments, practices and standards; (C) all applicable provisions of the New York State Mental Hygiene Law and the New York Code of Rules and Regula-

tions; and (D) all applicable Office of Mental Health and Manhattan Psychiatric Center policies and procedures.

III. *PSYCHIATRIC CARE AND PSYCHIATRISTS*

A. *Staffing.*

1. Within two years from the execution of this Stipulation and Final Judgment by the Court, defendants will provide one psychiatrist for every fifteen patients on the Evaluation and Brief Treatment Unit and the Secure Care unit and one psychiatrist for every thirty patients on all other units.

2. Psychiatrists at the Manhattan Psychiatric Center will be encouraged to attain Board certification. Manhattan Psychiatric Center will continue its current academic affiliations which are designed to provide post-graduate preparation for such certification.

B. *Supervising Psychiatrists.*

1. Within two years from the execution of this Stipulation and Final Judgment by the Court, defendants will provide the equivalent of one supervising psychiatrist per unit, to be assigned to units in the discretion of the Executive Director of the Manhattan Psychiatric Center or his designee in accordance with the terms of this Stipulation and Final Judgment.

2. Supervising psychiatrists shall be either Board certified or Board eligible with five years of clinical experience.

3. Manhattan Psychiatric Center shall establish standardized tasks for supervising psychiatrists which shall include, but not be limited to, (a) provisions for regular audits of the care provided patients falling into categories which the Executive Director believes warrant review; and (b) the review of dosages and blood levels of patient medication.

IV. MEDICAL CARE

A. *Staffing and Staff Responsibilities.*

1. Manhattan Psychiatric Center shall adhere to its policies concerning the number of physicians and medical specialists assigned to duty.

2. In order to ensure coordination of psychiatric care and general medical care, Manhattan Psychiatric Center shall establish and implement a policy requiring the clinical physician responsible for the physical health care of the patients assigned to a ward to make rounds of that ward on at least a weekly basis, to consult with the treating psychiatrist of any patient receiving treatment for a physical illness or disorder, and to make appropriate entries into the patient's clinical record.

B. *Policies and Procedures.*

1. Manhattan Psychiatric Center shall afford every patient a physical examination conducted by a physician within twenty-four hours of the patient's admission. Thereafter, patients shall be afforded subsequent physical examinations on an annual basis or as needed.

2. Manhattan Psychiatric Center will maintain a master log of patients under the care of a clinical physician. A designee of the Executive Director shall have responsibility to assure that care prescribed for such patients is delivered.

3. So that laboratory tests and procedures are administered and followed-up in a timely fashion, Manhattan Psychiatric Center will (a) hire a sufficient number of ward clerks to ensure that lab results are posted in patient charts; (b) mark those patient charts where laboratory tests have been ordered with a sticker or stickers marked "awaiting lab results;" and (c) create a "tickler system" under the supervision of a designee of the director to ensure that such results are obtained in a timely fashion from the department or organization making such tests.

4. Manhattan Psychiatric Center will conduct periodic audits of medical records to ensure that its policies regarding records are being implemented.

5. Manhattan Psychiatric Center will adhere to its policies concerning the provision, use and maintenance of emergency medical equipment.

6. Manhattan Psychiatric Center will implement Office of Mental Health policies governing the delivery of emergency medical services.

7. Manhattan Psychiatric Center will conduct regular consultations between its medical services staff and the staff of those hospitals to which its patients are referred for medical reasons. Such consultations will focus on (a) the quality of care given Manhattan Psychiatric Center patients at the receiving hospital; and (b) the adequacy of documentation of (i) the reasons for referral and (ii) the care rendered by the receiving hospital.

V. *NURSES AND NURSING CARE*

A. *Staffing.*

1. Within three years of execution of this Stipulation and Final Judgment by the Court, there shall be (a) one registered nurse on duty on each ward on the day and evening shifts; (b) one registered nurse for every two wards on the night shift;

2. Within ninety days of the execution of this Stipulation and Final Judgment by the Court, defendants shall prepare a plan detailing the efforts that will be made to obtain the complement of registered nurses required to achieve the level of nursing coverage provided for in paragraph V(A)(1). This plan shall include a timetable for achievement of such nursing coverage during each of the three years following execution of this Stipulation and Final Judgment. Defendants shall describe their progress in meeting this timetable as Part of the report required by paragraph I(C)(4)(b).

B. Direction and Supervision.

1. There shall be a Director of Nursing and two Assistant Directors of Nursing at Manhattan Psychiatric Center. For purposes of satisfying the staffing requirements of paragraph V(A)(1), these persons shall not be counted.

2. The Director of Nursing shall have the following minimum qualifications:

(a) a license and current registration to practice as a registered nurse in New York State *and* a Master's Degree in an administrative or health related field *and* four years of experience in a mental health setting. Two years of the qualifying experience must have been in a registered nursing position and two years in an administrative or management position; *or*

(b) a license and current registration to practice as a registered nurse in New York State *and* a Bachelor's Degree in Nursing *and* six years of experience in a mental health setting. Two years of the qualifying experience must have been in a registered nursing position and four years in an administrative or management position.

3. The Manhattan Psychiatric Center shall make all reasonable efforts to hire Assistant Directors of Nursing that have Master's Degrees in Nursing. At a minimum, the Assistant Directors of Nursing shall have a license and current registration to practice as a registered nurse in New York State and three years. experience in a mental health setting. Two years of the qualifying experience must have been in a registered nursing position and one year in an administrative or management position.

4. Manhattan Psychiatric Center shall establish a formal nursing supervisory process, and the role of nursing administrators shall be defined and clarified to enhance the supervision of nursing services. Manhattan Psychiatric Center shall also establish a quality assurance and appropriateness process for nursing services, which, at a minimum, shall require nursing administrators to (a) conduct periodic audits of the nurs-

ing care delivered in that part of the facility for which the administrator is responsible and (b) for the quality of that part of the clinical record documenting that care.

C. Policies and Procedures.

1. Professional Nursing Care at Manhattan Psychiatric Center shall be provided in accordance with standards enunciated from time to time by the Joint Commission on Accreditation of Hospitals ("JCAH"), including any changes in the JCAH standards made during the time period covered by this Stipulation and Final Judgment, and the nursing care standards established by Manhattan Psychiatric Center and the Office of Mental Health.

2. Manhattan Psychiatric Center shall adhere to its own Policies as well as Office of Mental Health policies regarding the use of restraint and seclusion.

3. Any member of the nursing staff who discovers a patient in cardiopulmonary arrest or respiratory arrest shall immediately institute appropriate cardiopulmonary resuscitation procedures and shall, as quickly as practicable under the circumstances, summon necessary medical and nursing assistance.

VI. MEDICATION

A. Dispensation.

1. Medication at Manhattan Psychiatric Center shall be administered either by registered nurses or licensed practical nurses.

2. Manhattan Psychiatric Center shall implement the Unit Dose System throughout the facility within one year of execution of this Stipulation and Final Judgment by the Court.

B. Policies and Procedures.

1. Manhattan Psychiatric Center shall establish and implement a policy requiring each ward to conduct medication

groups for patients in order to educate patients about medications and their effects.

2. The Manhattan Psychiatric Center shall adhere to Office of Mental Health policies on (a) monitoring of medication; (b) polypharmacy; and (c) screening for tardive dyskinesia.

VII. PROGRAMS AND ACTIVITIES

A. Programming.

1. Subject to paragraphs 2 to 4 of this Section VII(A), Manhattan Psychiatric Center shall adopt a goal of providing each patient with a minimum of twenty hours' programming per week. Programming shall be available (a) seven days per week; (b) on day and evening shifts; and (c) on-ward, off-ward and at the Rehabilitation Center. In calculating the number of programmed hours per patient per week, Manhattan Psychiatric Center shall not include time spent watching television unless watching television is in fact a supervised activity in which, for example, staff discuss the televised programs with patients before, during or after viewing.

2. All patients shall have the programming opportunities described in paragraph 1 of this Section VII(A), *provided however*, that (a) patients in the infirmary shall be exempted from the requirements of paragraph 1 of this Section VII(A); (b) patients on the Evaluation and Brief Treatment and Secure Care units will participate according to need and individual ability, but may be exempted from the requirements of paragraph 1 of this Section VII(A) because of the acute nature of their conditions; and (c) patients on any unit may be exempt from participation based on an assessment of individual condition and need. The reasons for the exemption will be detailed in the Patient's chart, and the continuing need for the exemption shall be reviewed by the patient's treatment team at least on a weekly basis.

3. Inability to participate in programmed activities based on clinical reasons shall be documented in the chart by the ward psychiatrist or treatment team leader.

4. A patient's refusal to participate in programming shall be handled in accord with applicable New York law. Nothing shall prohibit Manhattan Psychiatric Center staff from encouraging voluntary patient participation in programming.

B. Policies and Procedures.

1. The Director shall designate individuals at the unit or ward level to assume primary responsibility for ensuring that scheduled programming occurs. They shall also be responsible for encouraging, and motivating staff to encourage, patient participation in programmed activities. Performance evaluations of such designees as well as other staff as deemed appropriate by the Director and his designees shall include assessments of the discharge of the responsibilities outlined in this Section.

2. Manhattan Psychiatric Center shall establish, and, when established, shall adhere to, standards for clinical programs which shall address, among other things, (a) assessment; (b) affective, cognitive, and physical functioning; (c) audits of scheduled programming; (d) the referral, discharge criteria, goals and methodology for groups; and (e) the process for ensuring staff coverage of scheduled activities.

3. As the off-ward program space described in paragraph IX(B)(3) is developed, Manhattan Psychiatric Center will establish policies, procedures and schedules for the use of such space by patients on a regular basis.

4. Every patient shall receive or, if appropriate, have maintained by staff, a program card, which shall name the program activities in which the patient should participate, as well as the location, day, and time of each program. Manhattan Psychiatric Center shall establish and implement a policy which shall identify the Procedure for use of the program card to maximize (a) patient participation in Programmed activities and (b) coordination and consultation between and among interdisciplinary staff on-ward, off-ward and in the Rehabilitation Center relating to patient Programming.

VIII. *MENTALLY RETARDED PATIENTS*

A. New Admissions; Treatment and Transfer.

1. From the date of this Stipulation and Final Judgment, Manhattan Psychiatric Center will adopt a goal of not admitting individuals with a primary or secondary diagnosis of mental retardation. In the event that an individual admitted to Manhattan Psychiatric Center after the date of this Stipulation and Final Judgment is diagnosed as being mentally retarded, he or she will be evaluated by the Office of Mental Retardation and Developmental Disability ("OMRDD") within forty-five days of the diagnosis, or upon stabilization of the psychiatric condition precipitating the admission. If an individual is determined to have an IQ below 50 or comparable handicap in another developmental disability, or if the person has an IQ between 50 and 69 or a comparable handicap in another developmental disability, and the patient's primary need is a developmental service rather than inpatient psychiatric care, the patient shall be transferred to a program operated or licensed by the Office of Mental Retardation and Developmental Disabilities within a reasonable period of time.

2. Manhattan Psychiatric Center may admit individuals from OMRDD for the purpose of stabilizing their psychiatric condition. When the psychiatric condition precipitating the admission is stabilized, Manhattan Psychiatric Center shall notify OMRDD. Within ten days of such notification, the patient shall be returned to the custody of OMRDD.

3. To the extent any eligible individuals admitted after the date of this Stipulation and Final Judgment are not transferred to an OMRDD unit within a reasonable period of time, Manhattan Psychiatric Center shall specifically address the treatment needs of those patients. Manhattan Psychiatric Center shall consider in consultation with experts in the treatment of mental retardation and developmental disabilities the creation of a separate unit for such patients and transfer those deemed appropriate for such unit to the unit. If Manhattan Psychiatric Center decides not to create a separate unit

for such patients, it will report this decision and the reason for it to the plaintiffs. Whether or not a special unit is established pursuant to this paragraph, Manhattan Psychiatric Center shall develop and implement specific treatment plans for all patients admitted after the date of this Stipulation and Final Judgment having a primary or secondary diagnosis of mental retardation, in consultation with outside experts in the treatment of mental retardation and developmental disabilities, taking into account the specialized needs of such patients.

4. The Office of Mental Health and OMRDD agree to act in accordance with the OMRDD/OMH Plan For Service to the Multiply Disabled (the "Plan") with respect to patients admitted after the date of this Stipulation and Final Judgment having a primary or secondary diagnosis of mental retardation. Defendants retain the discretion to amend the Plan consistent with the terms of this Stipulation and Final Judgment. Plaintiffs shall have access to any such amended Plan.

B. Existing Patients; Treatment and Transfer.

1. Manhattan Psychiatric Center shall, within sixty days of execution of the Stipulation and Final Judgment by the Court, identify all patients currently at the Manhattan Psychiatric Center having a primary or secondary diagnosis of mental retardation or developmental disability.

2. Within forty-five days of identification of such patients, OMRDD shall assess such patients to determine which fit the criteria for treatment in an OMRDD facility.

3. Those individuals fitting the eligibility criteria established by OMRDD shall, within sixty days be transferred to a unit operated by OMRDD to provide appropriate rehabilitative services for this population. OMRDD shall give such patients priority status for placement in OMRDD units over patients from other facilities.

4. In the event that patients identified pursuant to paragraph 1 of this Section VIII(B) are not transferred to an OMRDD unit within sixty days, then such patients shall be treated in accordance with the requirements of paragraph VIII(A)(2).

5. The Office of Mental Health and OMRDD agree to act in accordance with the Plan with respect to existing patients as of the date of this Stipulation and Final Judgment having a primary or secondary diagnosis of mental retardation. Defendants retain the discretion to amend the Plan consistent with the terms of this Stipulation and Final Judgment. Plaintiffs shall have access to any such amended Plan.

IX. PHYSICAL PLANT

A. *Current Capital Plans; Other.*

1. The Office of Mental Health has completed capital renovations necessary to assure compliance with national fire safety standards such as to satisfy Department of Health and Human Services Medicare and Medicaid certification requirements.

2. On a periodic basis, but no less than twice each year, the Office of Mental Health shall arrange for an inspection of Manhattan Psychiatric Center by qualified inspectors to ensure continued compliance with life safety codes and applicable sanitation codes.

3. Manhattan Psychiatric Center will complete implementation of the tray line system of food preparation within one year of entry of this Stipulation and Final Judgment, and will thereby ensure compliance with applicable codes and regulations for food preparation, transportation, and storage.

B. *Planned Capital Expenditures.*

1. The Office of Mental Health plans additional capital renovations at Manhattan Psychiatric Center. These renovations or "space conditioning" shall (a) address any fire safety issues which have not been addressed by the capital renova-

tions described in paragraph XI(A)(1); (b) provide for removal of asbestos; (c) provide for installation of air conditioning; (d) provide for improvements to (i) electrical systems; (ii) plumbing systems; and (iii) elevators; and (e) enhance the living environment on all wards. This project is now being designed. Funds for construction will be requested in the FY 1988-89 Executive Budget. If an appropriation is made, construction is anticipated to begin in June 1988. In anticipation of the space conditioning project, 220 patients will be transferred from Manhattan Psychiatric Center to JCAH accredited/HHS certified facilities, beginning in October 1987. These transfers will occur according to state law and regulation. Every effort will be taken to assure that the transfers are voluntary.

2. Although it is intended that approximately 100 of the 220 patients who are transferred during space conditioning will be transferred back to the Manhattan Psychiatric Center after work is completed, and some other transferred patients may later be re-admitted to the Manhattan Psychiatric Center during the normal course, having been discharged from other facilities, defendants agree that, aside from these contemplated re-admissions, there will not be a mass transfer back to the Manhattan Psychiatric Center of patients who had been transferred out during space conditioning. It is intended that as a result of space conditioning there will be a permanent reduction of 120 patients from the Patient census as of the date this Stipulation and Final Judgment is executed by the Court. Whether or not this reduction in census occurs, Manhattan Psychiatric Center shall adhere to the staffing guidelines established elsewhere in this Stipulation and Final Judgment.

3. The Office of Mental Health intends as part of Manhattan Psychiatric Center's space conditioning project to convert three additional wards, now used as residential space for patients, to space for off-ward Programming. Upon completion of the project, a total of four wards in the Meyer and Dunlap buildings will be available for this purpose, in addi-

tion to the Rehabilitation Center. During the project, three wards will be available for this purpose.

X. EDUCATION AND TRAINING

A. Nurses and Nursing Staff.

1. Within 180 days of execution of this Stipulation and Final Judgment by the Court, Manhattan Psychiatric Center shall recruit and hire an appropriately qualified nurse to oversee and direct nursing education.

2. Within one year of execution of this Stipulation and Final Judgment, all direct care staff working on the wards of Manhattan Psychiatric Center shall be trained in basic cardiopulmonary resuscitation in accordance with the American Heart Association Program. Thereafter, on an ongoing basis, at least 50% of the direct care staff working on each ward on each shift shall be currently certified in basic cardiopulmonary resuscitation, and Manhattan Psychiatric Center shall make all reasonable efforts to ensure that all direct care staff working on each ward on each shift shall be currently certified in basic cardiopulmonary resuscitation.

3. Nursing staff shall be trained in the use and maintenance of emergency medical equipment in accordance with Manhattan Psychiatric Center policies. All nursing staff shall be responsible for knowing the location of emergency medical equipment.

4. Manhattan Psychiatric Center shall provide training on a Periodic basis to all nursing staff on medication administration and monitoring.

5. Within 30 days of the execution of this Stipulation and Final Judgment, all direct care staff working in Manhattan Psychiatric Center's infirmary shall be trained in cardiopulmonary resuscitation in accordance with the American Heart Association program. Thereafter, on an ongoing basis, at least 85% of the staff working in the infirmary shall be certified on a current basis and at a minimum there shall be at least 2 staff members on every shift working in the infirmary

who are certified in cardiopulmonary resuscitation on a current basis.

B. Other Training and Education.

Manhattan Psychiatric Center shall make all reasonable efforts to assure that all direct care staff are trained with regard to fire safety issues and the identification and management of the violent patient.

Dated: New York, New York
July ____, 1987

For the Plaintiffs:

SHEARMAN & STERLING

Robert F. Dobbin

For the Defendants:

New York State Department
of Law

Robert Abrams
Attorney General
State of New York
by Arnold D. Fleischer

MENTAL HEALTH LEGAL SERVICE

Robert F. Gottlieb

SO ORDERED:

Louis L. Stanton
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
74 Civ. 4581 (RJW)

LOUISE TODARO, *et. al.*,

Plaintiffs,

—against—

THOMAS A. COUGHLIN, III, *et. al.*,

Defendants.

MEMORANDUM OF UNDERSTANDING

The parties having executed a stipulation agreeing to modify the Court's Judgment and resolving plaintiffs' September 14, 1988 motion for contempt and modification of the Judgment, it is hereby understood that the following shall apply to this stipulated modified Judgment:

1) Section III of the stipulated modified Judgment requires the establishment and maintenance of a system to implement and track physician orders. The parties agree that the terms of this Section shall be subject to re-negotiation based upon the final report on the medical records system at Bedford Hills being prepared by the monitor's assistant, Antonio Martin, and that recommendations contained in this report, which are not inconsistent with the goals of this Section, may be incorporated therein.

2) Sub-section II(B) requires the establishment and maintenance of a system to provide care to plaintiffs between screening sessions. Paragraph II(B)(6)(b) requires that logs of all inmate requests for such care be kept for a period of six months following the date of entry of this Judgment. It is

understood by the parties that following completion of this six month period, the Court's monitor and plaintiffs' counsel may review these logs. If after this review the monitor or plaintiffs' counsel believe that the system is failing to provide face to face medical evaluations of plaintiffs by medical staff, when appropriate, including when plaintiffs complain of pain or discomfort, the parties will re-negotiate this section to ensure the proper delivery of medical care to plaintiffs between screening sessions.

3) Section V(D) of the Judgment requires that defendants employ a nurse administrator, 14 fulltime registered nurses and two fulltime licensed practical nurses. In the event that defendants are unable to meet the requirement that they employ 14 fulltime registered nurses, after having made bona fide attempts to do so, they may seek permission to employ licensed practical nurses in lieu of registered nurses, from the monitor or the Court. Such permission shall be given only upon a showing that the employment of licensed practical nurses instead of registered nurses will not have a deleterious impact upon the provision of health care to plaintiffs. In no event shall defendants employ less than twelve registered nurses.

DATED: NEW YORK, NEW YORK
June 23, 1989.

PHILIP L. WEINSTEIN
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BY:

BARBARA B. BUTLER
DARREN O'CONNOR
Assistant Attorneys General

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
74 Civ. 4581 (RJW)

LOUISE TODARO, *et. al.*, and
all other persons similarly situated, *Plaintiffs,*
—against—
THOMAS A. COUGHLIN, III, *et. al.*,
Defendants.

STIPULATION AND ORDER
MODIFYING JUDGMENT

WHEREAS, on September 14, 1988 Plaintiffs moved to hold Defendants in contempt of the Judgment entered in this case, and for modification of said Judgment to achieve its purposes; and the parties having agreed to resolve this matter without further litigation, subject to the approval of the Court:

IT IS HEREBY STIPULATED that Plaintiffs' motion is withdrawn without prejudice; and

IT IS FURTHER STIPULATED that the Judgment in this case is modified, so as to ensure that defendants provide competent and adequate medical care to plaintiffs, consistent with contemporary medical standards, and the entire revised Judgment is as follows:

I. IN PATIENT COMPONENT (IPC)

A) IPC shall not be used for boarding any types of persons other than medically sick patients, except that psychiatric patients may be temporarily boarded in the event the

mental hygiene satellite clinic is full. The provisions of this Judgment do not govern psychiatric care and treatment.

B) No inmate shall be locked into her room while confined on IPC unless a health staff member (physician or nurse) has determined that such locking will not jeopardize the inmate's health or interfere with the delivery of prescribed care and:

1) the locking is at the request of the inmate who expresses concern for her personal safety; or

2) a health staff member determines that the inmate presents a danger to others; or

3) an inmate has been admitted to IPC from disciplinary segregation and the Deputy Superintendent for Security determines that the locking is necessary for security reasons.

In any case where an inmate's door is locked a health staff member shall personally observe the inmate every half hour. An entry including the name of the inmate and the basis for the decision to lock will be made in the IPC log referred to in subsection I(H).

C) The solid door in the IPC corridor shall be used only as is necessary for fire safety and a grated door permitting visual observation of the entire corridor shall be employed at the end of the corridor.

D) A nurse's station shall be established and maintained within or immediately adjacent to IPC and shall contain all necessary emergency equipment, medication and supplies which shall be immediately accessible to all health staff members.

E) Defendants shall have a nurse stationed on IPC to observe and assist inmates, 24 hours a day, seven days a week. While on duty, this nurse shall not leave IPC for any significant period and shall have no duties which require leaving IPC for more than a few minutes or otherwise impair his or her ability to observe and assist IPC inmates. This nurse shall make rounds and personally observe each inmate in IPC at least once every two hours and more often when required

by a patient's medical condition, and such rounds will be recorded in the log book as required by paragraph I(H). Defendants shall ensure, to the extent possible, the continuity of the nursing staff in IPC so that staff remains familiar with the unit and can provide continuity of care. At least one registered nurse shall be present in the Health Services Building at all times, unless said nurse is providing emergency medical services in another part of the facility.

F) Defendants shall maintain at all times a functioning signal system for use in emergency situations which shall operate as follows:

- 1) The system must be operable by each inmate in IPC directly from her bed.

- 2) The signal shall be visible and audible to the nurse assigned to IPC.

- 3) The signal must be responded to by the nurse or other IPC health staff member expeditiously, and as soon as possible after the patient's call. Special attention shall be given to signals from inmates whose conditions are serious. If all IPC health care personnel are actively engaged in a medical emergency when a signal is sent, then the signal may be answered by a correction officer who shall then promptly communicate with health staff.

G) Physician rounds:

- 1) shall be conducted five days a week, irrespective of holidays. There shall be no more than two consecutive days without rounds being held. On any day preceding a day in which rounds are not to be conducted, the facility Medical Director, or a physician designated by the director, must examine each IPC patient and review her chart, and based upon this examination and review, certify whether each patient must be seen by a physician on the following day or days in which rounds will not be conducted. In making this determination, the certifying physician will use her best medical judgment, giving special attention to persons with AIDS related illness. An

entry regarding this review and certification shall be made in each patient's chart; and

2) shall be conducted by the facility Medical Director or a physician designated by the director, who shall have appropriate training and expertise to care competently for all patients confined in IPC. These rounds shall be conducted in conformity with accepted medical standards, and in accordance with a protocol which shall be created, maintained and followed by medical staff. At a minimum this protocol shall require that rounds consist of a face to face encounter between the physician and patient, appropriate physical examinations, and the review of each patient's chart, with appropriate entries being made.

(H) A log book will be kept, separate from the patients' charts, reflecting all rounds of IPC conducted by medical personnel, which at a minimum shall include the date and time of each round, and the signature of the person making the round.

(I) Defendants shall have sufficient space available in IPC so that infirmary care will be available to all inmates requiring such care. IPC will be maintained in a sanitary, well ventilated and healthful manner. All necessary measures will be taken on a regular basis to keep the IPC free of insects, vermin and rodents.

(J) All medical staff assigned to IPC shall be authorized by defendants to call directly for an ambulance or other immediate transportation to a hospital when such transportation is deemed necessary.

(K) Upon the termination of sub-sections I(A)-(G), (I) & (J) in accordance with sub-section XI(D), the following provisions shall apply: IPC shall be used for medically sick inmates, shall have sufficient space so that infirmary care is available to all inmates requiring it, shall be maintained in a healthful manner, and shall have a nurse's station within it or immediately adjacent to it which will be connected to a functioning room signal system for patient use in emergencies.

Physician rounds of the IPC shall be conducted five days per week, and more often when medically indicated. There shall be a nurse assigned to the IPC 24 hours a day, seven days a week, who shall conduct regular rounds, and who shall have no duties outside of IPC which require leaving IPC for any significant period or otherwise impair his or her ability to observe and assist IPC inmates. Physician and nurse rounds shall be conducted in accordance with medically accepted standards and all medical staff assigned to IPC shall have the authority to summon immediate transportation to move a patient to a hospital.

II. SICK CALL AND PHYSICIAN REFERRAL PROCEDURE

A) In the absence of a functioning evaluative screening procedure as defined in sub-section II(B), below, all inmates who request to be seen by a physician must be seen by a licensed physician by the next day.

B) In the absence of automatic access to a physician as provided for in sub-section II(A) above, inmates who seek medical attention must be medically evaluated and screened and physician appointments scheduled according to the urgency of need, consistent with the following procedures:

1) Medical evaluation and screening (hereinafter screening) shall be performed at a place separate from the administration of medication. In the event any-part of screening is conducted at the same time as any part of medication administration, defendants shall ensure that inmates have access to both services on any given day.

2) Screening shall be conducted by licensed medical personnel, with training at least equivalent to that of a registered nurse, who have received special training in the techniques of physical assessment, and in the recognition, diagnosis and treatment of infectious diseases consistent with Section VIII, below.

3) Any person conducting screening must be certified by the facility's Medical Director as having received this requisite training in physical assessment and infectious diseases. In the event no person so certified is available to conduct screening, there shall be direct access to a physician within 24 hours of an inmate's request, as set forth in sub-section II(A). above. A licensed physician shall either be present in the facility or on call, during screening, to provide needed assistance.

4) Specific written protocols, defining the evaluation procedures to be followed at screening and the treatment which the screening staff member may provide, shall be established by the facility's Medical Director, shall be available to the screening staff member, and shall be followed by medical staff. Such protocols shall include, but not be limited to the recognition and treatment of chronic and complex conditions such as HIV related illness, shall govern the scheduling of physician appointments according to the urgency of need, and shall be consistent with contemporary standards of care and all aspects of this Court's Order and Judgment.

5) Defendants shall conduct screening five days a week, irrespective of holidays. There shall be no more than two consecutive days without screening being held. Screening shall be readily available to all members of the plaintiff class and shall be conducted at the first screening session following the inmate's request. An inmate shall request screening by placing her name on a screening sign-up list which shall be available to all inmates in their housing areas.

6) Defendants shall create, maintain and follow a protocol governing the provision of medical care between screening sessions to inmates. At a minimum this protocol will include the following:

a) When an inmate requests care between screening sessions, a corrections officer will telephone a member of the health staff and shall provide the details of the inmate's condition. The health staff member shall conduct a medically pertinent inquiry into the inmate's condition, and determine

whether the inmate should be seen by a member of the health staff prior to the next screening session. Whenever an inmate complains of pain or discomfort the health staff member must conduct a face to face evaluation of the inmate and provide appropriate care.

b) Defendants shall maintain a log of all inmate requests as set forth in sub-paragraph II(B)(6)(a) which shall contain the inmate's name, the nature of the complaint and whether the inmate was seen by a member of the health staff. Defendants shall maintain these logs for six months following the date of entry of this Judgment.

7) Screening shall be conducted in a manner and location permitting both confidential communication between the inmate and the screening medical staff member, and private physical examinations relevant to the physical complaints presented by the inmate.

8) The screening staff member shall have immediately available for use during screening a thermometer, a sphygmomanometer, a tongue depressor, an otoscope, a stethoscope, materials for taking cultures, a scale, a sufficient supply of all medications required by the protocols established in accordance with paragraph II(B)(4), and any additional equipment and supplies which the defendants deem necessary to conduct screening.

9) The medical record of the inmate being screened shall be maintained in a confidential manner, and shall be available to the health care provider at the time of screening. At the time of screening, the screening staff member shall make an entry in the inmate's individual medical record, which shall include a description of the inmate's health complaint and condition, an indication of the staff member's recommendations, and whether a doctor's appointment should be scheduled. A brief statement of this information shall be placed on either a separate screening roster or on the screening sign up list.

10) When a physician appointment is to be scheduled for an inmate, the screening staff member shall enter a written notation of the need for the appointment either on the screening sign up list or the screening roster. The list or roster shall be transmitted to the staff member responsible for scheduling physician appointments, who will place the inmate's name on the appropriate physician's appointment list. Excluding ophthalmology, podiatry and dermatology, physician appointments shall be scheduled for within 14 calendar days of the screening date, except where an inmate's condition requires a physician's appointment sooner, in which case the screening staff member shall indicate this need on the screening list or roster, and the staff member responsible for scheduling physician appointments shall schedule the appointment according to the stated recommendation.

a) Regardless of the recommendation of the screening staff member, if an inmate requests a physician appointment, one shall be scheduled no more than 14 calendar days from the request;

b) Unless the appointment is to be scheduled for the same or next day, the staff member preparing the physician appointment list shall inform the inmate of the date and time of the appointment by providing the inmate with a written appointment slip, signed by this staff member and setting forth the inmate's name, and the date and time of the doctor's appointment. The signed appointment slip shall be provided to the inmate in sufficient time to provide adequate notice of and preparation for the appointment.

11) Any inmate who is known to be HIV+ or has a history consistent with HIV positivity and who presents at screening with possible symptoms of an opportunistic AIDS infection, as set forth in the AIDS protocol referred to in Section VIII, shall be examined by a licensed physician who shall have expertise in the treatment of AIDS related illness as set forth in sub-section V(A), that day, and when appropriate by the infectious disease specialist the next time this specialist is in the facility. In the event the inmate's condition

constitutes an emergency she must be seen within one hour by a facility physician and she must be examined by the infectious disease specialist the next time this specialist is in the facility, or be immediately transported to an outside hospital.

C) Upon the termination of sub-sections II(A) and (B) in accordance with sub-section XI(D), the following provisions shall apply: Medical evaluation (screening) shall be conducted in a professionally sound, orderly and confidential manner in accordance with protocols. It shall be conducted at least five days per week by capable medical staff appropriately trained in physical assessment and recognition and diagnosis of infectious diseases. Inmates who seek medical attention must be medically evaluated at the next screening session following their request and there shall be a system for the provision of emergency medical care between screening sessions. Screening staff must make appropriate notations regarding the screening encounter in the inmate's medical record. Physician appointments shall be scheduled within 28 calendar days of the inmate's request for medical attention, or in a shorter time if medically required. Inmates will be provided with adequate notice of physician appointments.

III. IMPLEMENTATION AND TRACKING OF PHYSICIAN ORDERS

A) Defendants shall institute, maintain and follow a system to coordinate the implementation and tracking of all physician orders so that care shall be provided within the time ordered, if any, and in any event in a timely fashion. Such orders include outside consultations, specialty care, inpatient stays, x-rays, and diagnostic and laboratory tests and procedures, regardless of whether these orders are to be filled inside or outside the facility. This system shall be reflected in written procedural guidelines, a copy of which shall be provided to the monitor and counsel for plaintiffs. This system shall not be changed without affording the monitor and plaintiffs' counsel notice of the proposed change and

an opportunity to discuss it with defendants. Orders for medication are not to be tracked under this system.

B) At a minimum this system shall include the following:

1) When appropriate, the physician making an order will designate a date, consistent with accepted medical standards, by which the ordered care must be completed and should enter such date in the inmate's chart. This date will be known as the "outside date".

2) Excluding orders for laboratory tests, all physician orders for the entire Bedford Hills medical staff will also be entered in one central file, record, or log (the "Ordered Care File"). The entries in the Ordered Care File shall contain the inmate's name, the ordering physician's name, the date of the order, the date and nature of the scheduled appointment or other service, a brief description of the patient's condition, the outside date (if any), and an indication whether the appointment or service was completed, or the reason why the appointment or service was not successfully completed.

3) Orders for laboratory tests shall be maintained in a separate Laboratory Order Book which shall contain the same categories of information as the Ordered Care File.

4) Inmates are to be timely advised of any necessary preparation for any test, examination or procedure to be conducted inside or outside the facility and the appropriate medical records shall accompany each inmate on outside medical trips.

5) All facility physicians, whether full or part time, will check the Ordered Care File and Laboratory Order Book at least once per week to determine if their orders have been carried out. If physicians are in the facility less than one time per week, they must check the Ordered Care File and Laboratory Order Book each time they are in the facility.

6) The facility's Medical Director or physician designee will monitor the Ordered Care File and Laboratory Order Book on a regular basis to ensure that orders have been com-

pleted by the ordered date, or if no ordered date was assigned, within sixty days of the order. In the event that an order has not been completed by the outside date, or within 60 days from the order if no outside date is indicated, it shall be the responsibility of this physician to notify the ordering physician, who shall take steps, as appropriate to ensure the provision of care, renew the order and if appropriate set a new outside date so as to assure continued monitoring as provided in this Section. Any such renewed order is subject to all of the provisions of this Section.

7) With the exception set forth in paragraph III(B)(7)(a), the facility's Medical Director or physician designee must review all medical paper work which accompanies an inmate back from an outside medical trip, and all results of lab tests or other records of ordered care on the date they arrive in the facility. If the Medical Director determines that review by the physician who ordered the care is necessary before the next scheduled appointment with this physician, then this physician must review and initial these papers on his or her next day in the facility. If indicated by the results, either of these physicians shall take immediate action if necessary.

a) The facility's Medical Director may designate a registered nurse to review all normal laboratory results which are provided to the facility in the form of a computer printout.

8) Inmates will receive written notice of results of laboratory or diagnostic tests which are of no clinical significance within fourteen (14) calendar days of the receipt in the facility of the results of such test.

9) In the case of non-emergent abnormal laboratory or diagnostic tests results of clinical significance, the inmate will be seen by the ordering physician, or if that physician is unavailable, by the Medical Director, within 14 calendar days of the receipt in the facility of the results of such test. At such time the physician will explain the result to the patient and order such follow up care as is appropriate. In the case of emergent abnormal results, either of these physicians shall take immediate and appropriate action.

C) Nothing contained in this Judgment shall prevent Bedford Hills Correctional Facility from participating in a Department wide computerization of medical records, even if such participation requires departures from some of the record keeping requirements of this Section; provided that such participation shall not diminish the facility's capacity to track physician orders, to deliver ordered care on a timely basis or to deliver a competent level of medical care.

D) Upon the termination of sub-sections III(A), (B) & (C) in accordance with sub-section XI(D), the following provisions shall apply: Defendants shall institute and maintain a system to coordinate the implementation and tracking of all physician orders so that care shall be provided in a timely and complete fashion. Such orders include outside consultations, specialty care, inpatient hospitalizations, x-rays, and diagnostic tests and procedures, regardless of whether these orders are to be filled inside or outside the facility. Physicians making such orders (excluding medication orders) will, when appropriate, assign an outside date by which such order must be reviewed, and if no such outside date is assigned to an order, it must be reviewed within sixty (60) days. If care is not delivered within the time ordered, or within 60 days if applicable, physicians must renew the order if appropriate, and take steps, as appropriate to ensure the provision of care. Inmates must be advised in a timely manner of necessary preparations prior to the delivery of care. All pertinent medical records will accompany inmates on outside medical trips. Inmates shall be notified within a medically appropriate time of the results of all laboratory work and diagnostic tests, and such results shall be reviewed by medical staff as soon as available and follow-up care shall be provided within a professionally appropriate time as dictated by the tests results.

IV. CHRONICALLY ILL INMATES

A) Defendants will ensure the regular monitoring by health care personnel of all chronically ill inmates including, but not limited to, persons suffering from:

- 1) AIDS
- 2) hypertension
- 3) heart disease
- 4) diabetes
- 5) cancer
- 6) asthma
- 7) tuberculosis
- 8) lupus
- 9) seizure disorders
- 10) kidney disease
- 11) Hodgkin's disease.

B) This monitoring shall include pertinent observations and appropriate testing and adjustments of medication.

C) A recall file shall be maintained of all chronically ill inmates which shall include the inmate's name, condition(s) the type(s) of monitoring required, the period(s) within which the inmate must be recalled, and the dates the monitoring is actually performed.

D) Defendants shall formulate protocols for chronic illnesses which shall be available at screening and in IPC.

V. STAFFING

A) Defendants shall employ at least one fulltime physician who is not a gynecologist, podiatrist or ophthalmologist who shall work on-site at Bedford Hills at least 34 hours per week. This physician must possess experience in the treatment of persons with HIV related illness. Defendants shall employ additional primary care physicians, excluding specialists, who shall work on site at Bedford Hills an additional minimum of 48 hours per week, and will employ a gynecologist on site at Bedford Hills a minimum of 12 hours per week. For purposes of this subsection the phrase "work on site at Bedford

Hills" may include work performed off site if such work is directly related to the provision of medical care to the facility, but does not include hours when the physician is off site and on call to the facility.

B) A fulltime physician working at least 34 hours a week on site at Bedford Hills, as defined in sub-section V(A), will be designated as the facility Medical Director, and as such will be responsible for the overall coordination and delivery of health care at the facility. The specific duties of the Medical Director will consist of responsibility for at least the following:

- 1) Administration of IPC, including conducting daily rounds or designating a capable and trained substitute physician to conduct rounds; ensuring the overall quality of screening; keeping informed of the nature of inmate complaints pertaining to medical care; and overseeing a system of peer review.

- 2) Certification of medical staff to conduct screening and continuing supervision of the screening process.

- 3) The review of all inmate deaths.

- 4) The supervision and review of the Ordered Care File and Laboratory Order Book.

- 5) The review of all medical paper work from outside medical trips, inpatient stays, or laboratory or diagnostic tests.

- 6) All other duties imposed by this Judgment on the Medical Director.

C) In addition to the physician staffing requirements set forth in sub-section V(A) & (B), and except as provided below, defendants shall employ a physician, board certified in infectious disease, at Bedford Hills:

- 1) This physician will work on site at Bedford Hills a minimum of 4 hours per week, and more if necessary to adequately meet the medical needs of plaintiffs. For purposes of

this paragraph the phrase "work on site" shall have the same meaning as set forth in sub-section V(A).

2) In the event defendants are unable to obtain the services of a physician board certified in infectious disease, after making a bona fide effort to do so, a physician suitably trained and experienced in the diagnosis and treatment of HIV related illness shall be employed. In this event the monitor must approve the adequacy and suitability of his/her training and experience. In the event that this contingency arises at a time when the monitor is no longer assisting the Court with this litigation, defendants will notify counsel for plaintiffs of the qualifications of this physician.

3) As an alternative to the infectious disease physician, defendants may secure the services of an outside medical facility to conduct an infectious disease clinic at Bedford Hills, provided that such clinic affords infectious disease care at least equivalent, in time and quality, to that offered by the physician.

4) This physician, or a physician associated with the alternative infectious disease clinic, shall be on call for consultation at all times.

5) The infectious disease physician or alternative clinic must keep a separate appointment book.

D) Defendants shall employ at Bedford Hills a minimum of one nurse administrator, 14 fulltime registered nurses and at least two fulltime licensed practical nurses. Defendants may utilize part-time nurses to fulfill this requirement. Defendants shall maintain at least two per diem nurse lines, to be used in the event that less than all of these fulltime positions are filled. If the two per diem nurse lines are not adequate to meet staffing vacancies, defendants may then utilize agency nurses to meet their staff obligations under this sub-section.

E) Defendants shall use their best efforts to avoid the use of agency or per diem nursing services and shall resort to these services only when bona fide attempts to fill vacant nursing positions have failed. In the event that agency or per

diem nurses are utilized, defendants will ensure that they are properly trained and certified as set forth in paragraph 11(B)(3), and will attempt to ensure the continuity of nurses assigned to the facility.

VI. MEDICAL RECORDS

A) Defendants shall maintain such medical records as are necessary for the competent and professional delivery of health care to the plaintiff class.

B) Defendants will:

1) use one medical record for each patient which will be arranged topically and chronologically, which will document each encounter with a health care provider, and which will utilize a problem list and problem oriented assessment.

2) discontinue the use of a separate medical record for patients admitted to IPC.

3) discontinue the use of the present Ambulatory Health Record (AHR), form number 3105).

4) discontinue the use of an active/inactive patient file; however, in the event a medical chart becomes so voluminous as to be unwieldy, additional volumes may be used. Nothing in this provision shall require defendants to reintegrate files which were separated prior to the entry of this Judgment.

5) require that all health care personnel write legibly.

C) Defendants shall employ a medical records supervisor who is specifically trained in the maintenance of medical records.

1) This supervisor and the medical records system shall be evaluated by an outside medical records consultant every two years, and this consultant will conduct inservice training as needed.

VII. RECORD KEEPING PROCEDURES AND MECHANISMS FOR ASSESSING THE PROVISION OF CARE

A) Defendants shall maintain such records as are necessary for effective and meaningful auditing of the performance of the medical care delivery system at Bedford Hills, including any record required by this Judgment.

B) At a minimum, these records shall include:

- 1) the IPC rounds record mandated by sub-section I(H),
- 2) the screening sign-up list and screening roster referred to in paragraph II(B)(10),
- 3) the Ordered Care File and Laboratory Order Book mandated by paragraphs III(B)(2) & (3),
- 4) the chronically ill recall file mandated by subsection IV(C),
- 5) Division of Health Services form HS-50 "Request for Consultation/Report of Outside Consultation," and.
- 6) The appointment book maintained by the infectious disease specialist, or the alternative infectious disease clinic as required by paragraph V(C)(5).

C) The above listed forms and records will be made available to the monitor upon his request. At reasonable intervals of not less than three months, defendants will provide to plaintiffs' counsel, upon request, portions of the above listed forms and records, as designated by plaintiffs, representing a time period not exceeding two weeks, except that the infectious disease physician appointment book shall be made available to plaintiffs' counsel without these time limitations.

D) Upon request, defendants will make plaintiffs' medical charts available to plaintiffs' counsel. Defendants will notify the monitor and plaintiffs' counsel of any inmate death at Bedford Hills or at an outside hospital, and will provide the monitor with a copy of the inmate's chart within ten days of the death and the autopsy report within ten days of its receipt

by the facility. Nothing in this sub-section or sub-section VII(C), shall be construed to govern whatever rights plaintiffs have to discovery under the Federal Rules of Civil Procedure or to obtain documents under the New York State Freedom of Information Law.

E) A problem solving group shall be formed and shall meet regularly at least every three months, unless all members agree to a different schedule. This group shall consist of the monitor or his designee, the facility's Medical Director or physician designee, the Superintendent or her designee, the plaintiff class through counsel, counsel for defendants, and the Assistant Commissioner of Health Services or his designee. It shall be the purpose of this group to review both systemic problems in the delivery of health care and individual inmate health care problems. This group shall also convene at the request of a member when important questions arise which cannot be resolved informally and cannot wait until the next-scheduled meeting. If the parties cannot agree on whether to convene a session of this group, this disagreement will be resolved by the Court's monitor, or if the duties of the monitor have ceased in accordance with sub-section XI(B), the Court will resolve this issue.

F) Individual class members have the right to lodge medical complaints through counsel directly to defendants with a copy simultaneously delivered to defendants' counsel. Before such a complaint is lodged, plaintiffs shall make reasonable efforts to resolve the complaint by presenting it to a medical staff member either at screening or at another encounter with medical staff, or through the facility's administrative remedies program, i.e., inmate grievance resolution committee. Plaintiffs' counsel shall use their best efforts to confirm that such efforts have been made before submitting a written complaint. Defendants' counsel will make their best efforts to respond about the complaint, either orally or in writing, as they choose, to plaintiffs' counsel within ten days of the receipt of the complaint. In the event that a complaint is in regard to an urgent situation, the complaint may be made without resort to the above described dispute resolution

mechanisms; the emergency complaint may be made orally or in writing and defendants' counsel will make their best efforts to provide an oral or written response within 24 hours. Plaintiffs agree to hold defendants' counsel harmless for contempt for any failure to perform a duty imposed upon them by this sub-section.

VIII. AIDS TRAINING, COUNSELING AND PROTOCOLS

A) Defendants will prepare, maintain and follow a protocol concerning the professionally sound treatment of inmates with HIV related illness. A copy of the protocol will be provided to the monitor and plaintiffs' counsel. The protocol shall not be changed without affording the monitor and plaintiffs' counsel notice of the proposed change and an opportunity to discuss it with defendants. At a minimum this protocol shall provide:

1) For weekly monitoring of IPC inmates who are diagnosed as having AIDS or ARC, and for systematic examinations of other inmates who are so diagnosed, by the physician described in sub-section V(C). This physician shall also be kept informed of the status of other HIV+ inmates and of all patients admitted to and confined in IPC.

2) For examinations by the physician described in sub-section V(C) of other HIV+ inmates who present to medical staff with possible symptoms of opportunistic AIDS infection.

3) For the appropriate counseling of all inmates during inmate orientation regarding HIV testing, of inmates who are HIV+, of inmates pre and post HIV testing and for appropriate notification of HIV test results.

4) For programs of inservice training for facility nurses, within a reasonable time of their appointment at Bedford Hills, which focus on diagnoses and treatment of HIV related illness. Any nurse who has not received this inservice training will not be permitted to make critical medical decisions

regarding the evaluation or course of treatment of any inmate who is HIV+, unless said nurse has been certified by the facility Medical Director as having had comparable and suitable other training or experience in the treatment of HIV related illness.

5) written medical guidelines concerning HIV related illness, its diagnosis, treatment, use of medications including AZT and pentamidine, and recognition and treatment of opportunistic infections. Such guidelines shall be available in IPC and during screening.

B) All correction officers at the facility will participate in Departmental training on AIDS as required by the Department of Correctional Services.

C) Upon the termination of sub-sections VIII(A) & (B) in accordance with the provisions of sub-section XI(D), the following provisions shall apply: Defendants shall maintain and follow a protocol concerning the appropriate diagnosis, treatment and care of inmates with HIV related illness by the physician described in sub-section V(C), and for the training of other medical staff in the recognition, diagnosis and treatment of persons with HIV related illness. This protocol will also address necessary inservice training for medical staff regarding HIV related illness and will provide for the counseling of inmates about AIDS and HIV testing.

IX. RESTRAINTS DURING MEDICAL TRIPS

If a member of the facility medical staff determines that the use of a particular restraint is medically contra-indicated for a medical trip, he or she shall inform the Deputy Superintendent for Security of his or her concerns. Defendants shall not use the "black box" unless the Deputy Superintendent for Security or his designee believes it is necessary for reasons of security. Nothing in this Section shall have any preclusive effect on any legal or administrative challenges made by any plaintiff to the use of restraints during medical trips.

X. NOTICE AND POSTING OF MODIFIED JUDGMENT

A) Except as provided in sub-section X(B), a copy of this modified judgment shall be available in English or Spanish as appropriate and shall be:

1) distributed to all inmates currently incarcerated at Bedford Hills;

2) distributed to all incoming Bedford Hills' inmates at their orientation; and

3) posted in the hospital building, IPC, and the law library.

B) plaintiffs; counsel shall submit to defendants' counsel a simplified explanation of this modified judgment which may be distributed in accordance with sub-section X(A).

C) Upon the termination of sub-sections. X(A) and (B) in accordance with sub-section XI(D), a simplified document reflecting the surviving terms of this Judgment shall be distributed in accordance with paragraphs X(A)(1), (2) & (3). This document shall consist of a verbatim listing of the surviving portions of the Judgment and shall contain an additional portion identifying counsel for plaintiffs.

XI. COMPLIANCE

A) In the event that plaintiffs' counsel believes that defendants are not in compliance with this Judgment, plaintiffs' counsel shall bring the facts supporting that belief to the attention of defendants' counsel at a meeting of the problem solving group and give defendants an opportunity to correct the alleged problem prior to counsel's filing of any motion concerning such alleged non-compliance.

B) At the conclusion of three (3) years from the date of entry of this Judgment, unless extended by the Court based upon an assessment that defendants have not been in compliance with this Judgment, or cannot reasonably be expected to maintain compliance, and then at the conclusion of that extended period, the Court will terminate its orders of

December 1, 1980 and April 8, 1981 appointing a monitor to assist the Court in measuring defendants' compliance with the terms of this Judgment, and all subsequent orders regarding appointment and reimbursement of the monitor and the monitor's assistants, and the duties of the court's monitor and his assistants will terminate.

C) At the conclusion of two (2) years from the date that the duties of the monitor and his assistants terminate, unless extended by the Court based upon an assessment that defendants have not been in compliance with this Judgment, or cannot reasonably be expected to maintain compliance, and then at the conclusion of that extended period, the requirements of sub-sections I(H); VI(C)(1), but not VI(C); and VII(C), (D) & (E) of this Judgment shall cease to bind the defendants as well as their successors, agents, employees, assigns and those acting in concert with them.

D) At the conclusion of two (2) years from the date that the provisions set forth in sub-section XI(C) cease to bind the defendants, unless extended by the Court based upon an assessment that defendants have not been in compliance with this Judgment, or cannot reasonably be expected to maintain compliance, or cannot reasonably be expected to provide Constitutionally required medical care, and then at the conclusion of that extended period, the requirements of sub-sections I(A)-(G), (I) & (J); II(A) & (B); III(A), (B) & (C); V(B)(4); VI(B); VII(B)(1)-(6) & (F); VIII(A) & (B); and X(A) & (B) shall cease to bind the defendants as well as their successors, agents, employees, assigns and those acting in concert with them.

E) For any motion brought by either party, the fact that this Judgment was entered by consent will not affect the Court's standard of review.

F) The terms of this Judgment are a product of the particular circumstances surrounding the delivery of medical care at Bedford Hills Correctional Facility. They do not apply to any other facility.

Dated: New York, New York
June 26, 1989

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